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**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

TOKYO BROADCASTING SYSTEM,  
INC., a Corporation registered in Japan,

Plaintiff,

vs.

AMERICAN BROADCASTING  
COMPANIES, INC., et al.,

Defendants.

AND CONSOLIDATED ACTION.

LEAD CASE NO. CV 08-06550-MAN

[Consolidated with Case No. CV 08-06622-MAN]

[Consolidated cases assigned for all purposes to Magistrate Judge Margaret A. Nagle, Courtroom 580]

**PROTECTIVE ORDER**

Date Action Filed: October 6, 2008

CASE NO. CV 08-06622-MAN

1 Based on the parties' Stipulation Re: Protective Order ("Stipulated Protective  
2 Order"), filed on December 3, 2009, the terms of the parties' Stipulated Protective  
3 Order are adopted as a Protective Order of this Court except to the extent, as set forth  
4 below, that those terms have been modified by the Courts' amendment of paragraph  
5 10 of the Stipulated Protective Order.  
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8  
9 The parties are expressly cautioned that this Stipulated Protective Order, in and  
10 of itself, creates no entitlement to file under seal information, documents, or things  
11 designated as "Confidential" or "Highly Confidential" by the parties. Accordingly,  
12 reference to this Stipulated Protective Order or to the parties' designation of any  
13 information, document, or thing as "Confidential" or "Highly Confidential" is wholly  
14 insufficient to warrant filing under seal. Good cause must be shown to support a  
15 filing under seal, and the parties' mere designation of any information, document, or  
16 thing as "Confidential" or "Highly Confidential" does not – without the submission of  
17 **competent evidence** establishing that the material sought to be filed under seal  
18 qualifies as confidential, proprietary, trade secret, or private information – establish  
19 good cause.  
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21  
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#### 24 **TERMS OF PROTECTIVE ORDER**

25  
26 1. In connection with discovery furnished by any of the Parties (or any of  
27 their present and former directors, officers, employees and agents) in the Action,  
28 counsel for the Parties may designate any nonpublic document, material, or

1 information as “Confidential” under the terms of this Protective Order if counsel in  
2 good faith believes that it contains the following proprietary or financial information:

- 3 (a) Financial details regarding the Parties’ internal business  
4 operations, including but not limited to revenue and expense reports, market  
5 projections, and other financial analysis;
- 6 (b) Financial terms of contracts and/or agreements with cable, satellite  
7 and other broadcast service providers;
- 8 (c) Financial terms of contracts and/or agreements for the acquisition  
9 of media content;
- 10 (d) Information regarding current or former personnel, personal  
11 financial information, or other personally identifiable information; and
- 12 (e) Trade secrets, defined pursuant to Section 3426.1 of the California  
13 Civil Code as “information, including a formula, pattern, compilation, program,  
14 device, method, technique, or process, that:
- 15 (1) Derives independent economic value, actual or potential, from  
16 not being generally known to the public or to other persons who  
17 can obtain economic value from its disclosure or use; and
- 18 (2) Is the subject of efforts that are reasonable under the  
19 circumstances to maintain its secrecy.”

20 2. In connection with discovery furnished by any of the Parties (or any of  
21 their present and former directors, officers, employees and agents) in the Action,  
22 counsel for the Parties may designate any nonpublic document, material, or  
23 information as “Highly Confidential” under the terms of this Protective Order if:

- 24 (a) it is properly designable under the terms of this Protective Order  
25 as “Confidential” as described above at Paragraph No. 1; and
- 26 (b) it contains or reflects trade secrets, proprietary, confidential or  
27 competitively sensitive business, commercial, research, development or  
28 financial information to which no personnel of the receiving party previously

1 have had unrestricted access, that, if disclosed to persons other than those  
2 permitted under Paragraph 7, could cause irreparable or substantial competitive  
3 or other injury; and

4 (c) counsel in good faith believes that there is good cause to restrict  
5 the personnel of the receiving party from access to such documents, material or  
6 information.

7 3. Any documents, material, or information to be designated as  
8 “Confidential” or “Highly Confidential” shall be so designated by affixing the legend  
9 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” to each page containing any  
10 “Confidential” or “Highly Confidential” documents, material, or information.

11 (a) Affixing the legend “CONFIDENTIAL” or “HIGHLY  
12 CONFIDENTIAL” on the cover of any multipage document which is bound,  
13 stapled, or otherwise securely attached shall designate all pages of the  
14 document as “Confidential” or “Highly Confidential,” unless otherwise  
15 indicated by the producing party.

16 (b) Transcripts of depositions of the Parties (or any of their present  
17 and former directors, officers, employees and agents) shall be provisionally  
18 designated “Highly Confidential” in their entirety until counsel for that party  
19 serves a separate written notice setting forth the designations for such transcript  
20 on a more specific basis, provided that the designating counsel shall make the  
21 designations within twenty-one (21) days of counsel’s receipt of the original  
22 deposition transcript.

23 (c) If at any deposition in the Action any document, material or  
24 information designated as “Confidential” or “Highly Confidential” is marked as  
25 an exhibit, inquired about or otherwise used, the portion of the deposition  
26 transcript that relates to such documents, material or information shall be  
27 automatically treated as if it had been so designated under the terms of this  
28 Protective Order.

1           4.     The inadvertent production by any of the Parties of any “Confidential” or  
2 “Highly Confidential” document, material or information during discovery in this  
3 Action without a “Confidential” or “Highly Confidential” designation, or any other  
4 inadvertent production by such party of any document, material or information in  
5 discovery in this Action, shall be without prejudice to any claim that such material is  
6 “Confidential” or “Highly Confidential” or is privileged in any respect or protected  
7 from discovery as work product or as trial preparation material, and such party shall  
8 not be held to have waived any rights by such inadvertent production. In the event  
9 that such production occurs, counsel for the producing party shall redesignate the  
10 appropriate level of confidentiality, which shall thereafter apply to such document,  
11 material or information subject to the terms of this Protective Order. Counsel for the  
12 producing party will also re-produce the documents with the appropriate  
13 confidentiality designation. In the event that any document that is subject to a claim  
14 of privilege or that is protected from discovery as work product or as trial preparation  
15 material is inadvertently produced, the party that inadvertently received the document  
16 shall return the document together with all copies of the document to counsel for the  
17 producing party promptly after it receives a written notice from counsel for the  
18 producing party that the document was produced inadvertently.

19           5.     Each party understands that treatment of documents and information as  
20 “Confidential” or “Highly Confidential” requires additional procedures (as specified  
21 in this Protective Order) and litigation therefore can be more burdensome to the  
22 extent that such designations are used. Each party therefore expressly agrees that  
23 these designations will be used only when there is a good faith belief that they are  
24 warranted. A party receiving documents, material, or information designated as  
25 “Confidential” or “Highly Confidential” may object to and request the removal of  
26 such designation, initially by making a good faith effort to resolve any such objection  
27 by contacting the producing party, and thereafter by court intervention, using the  
28 procedure set forth in Local Rule 37. Each party agrees that it will promptly meet and

1 confer in good faith about the removal of a confidentiality designation from a  
2 particular document or documents when another party gives notice of its belief that  
3 the designation was not appropriate with respect to the document(s) specified. While  
4 any application, motion, or other such filing pertaining to the appropriateness of a  
5 confidentiality designation is pending before the Court, the documents, material,  
6 information or testimony in question shall be treated as “Confidential” or “Highly  
7 Confidential” pursuant to this Protective Order. In addition, to the extent the Parties  
8 desire to file the Joint Stipulation required by Local Rule 37 under seal, the Parties  
9 may file a stipulation to that effect or the moving party may file an ex parte  
10 application making the appropriate request. The Parties must set forth good cause in  
11 the stipulation or ex parte application as to why the Joint Stipulation or portions  
12 thereof should be filed under seal.

13         6. Documents, material or information designated as “Confidential” (and  
14 any information derived therefrom) may be disclosed or made available by the  
15 receiving party only to the following:

16                 (a) The Court (including the Court’s administrative and clerical staff)  
17 in written submissions or at any oral hearing in the Action (in the manner  
18 provided by paragraph 10 of this Protective Order);

19                 (b) (1) Attorneys of record in the Action and their affiliated attorneys,  
20 paralegals, clerical and secretarial staff employed by such attorneys who are  
21 actively involved in the Action and are not employees of any party. (2) In-  
22 house counsel to the Parties and the paralegal, clerical and secretarial staff  
23 employed by such counsel. Provided, however, that each non-lawyer given  
24 access to documents, material or information designated as “Confidential” shall  
25 be advised that such documents, material or information are being disclosed  
26 pursuant to, and are subject to, the terms of this Protective Order and that they  
27 may not be disclosed other than pursuant to its terms;

28                 (c) Those officers, directors, partners, members, employees and

1 agents of the Parties that counsel for such parties deems necessary to aid  
2 counsel in the prosecution and defense of this Action; provided, however, that  
3 prior to the disclosure of documents, material or information designated as  
4 “Confidential” to any such officer, director, partner, member, employee or  
5 agent, counsel for the party making the disclosure shall deliver a copy of this  
6 Protective Order to such person, shall explain its terms to such person, and  
7 shall secure the signature of such person on a statement in the form attached  
8 hereto as Exhibit A;

9 (d) Court reporters transcribing depositions in the Action;

10 (e) Any deposition, trial or hearing witness in the Action who  
11 previously has had access to the documents, material or information, or who is  
12 currently an officer, director, partner, member, employee or agent of an entity  
13 that has had access to the documents, materials or information;

14 (f) Outside experts, advisors and/or translators consulted by the  
15 Parties or their counsel in connection with the Action, whether or not retained  
16 to testify at any oral hearing; provided, however, that prior to the disclosure of  
17 documents, material or information designated as “Confidential” to any such  
18 expert, advisor, and/or translator, counsel for the party making the disclosure  
19 shall deliver a copy of this Protective Order to such person, shall explain its  
20 terms to such person, and shall secure the signature of such person on a  
21 statement in the form attached hereto as Exhibit A. It shall be the obligation of  
22 counsel, upon learning of any breach or threatened breach of this Protective  
23 Order by any such expert, advisor, and/or translator, promptly to notify counsel  
24 for the designating party of such breach or threatened breach;

25 (g) Vendors retained by or for the Parties or their counsel to assist in  
26 preparing for pretrial discovery, trial, and/or hearings including, but not limited  
27 to, litigation support personnel, jury consultants, individuals to prepare  
28 demonstrative and audiovisual aids for use in the courtroom or in depositions



1 or mock jury sessions, as well as their staff, stenographic, and clerical  
2 employees whose duties and responsibilities require access to such materials;  
3 provided, however, that prior to the disclosure of documents, material or  
4 information designated as “Confidential” to any such person, counsel for the  
5 party making the disclosure shall deliver a copy of this Protective Order to such  
6 person, shall explain its terms to such person, and shall secure the signature of  
7 such person on a statement in the form attached hereto as Exhibit A;

8 (h) Any mediator or arbitrator that the Parties engage in this matter or  
9 the Court appoints; provided, however, that prior to the disclosure of  
10 documents, material or information designated as “Confidential” to any such  
11 mediator or arbitrator, counsel for the party making the disclosure shall deliver  
12 a copy of this Protective Order to such person, shall explain its terms to such  
13 person, and shall secure the signature of such person on a statement in the form  
14 attached hereto as Exhibit A;

15 (i) Governmental law enforcement agencies and other governmental  
16 bodies pursuant to a valid subpoena, provided that:

17 (i) the subpoenaed party give counsel for the designating party  
18 written notice of such subpoena within the shorter of (a) five (5) business  
19 days after service of the subpoena, and (b) five (5) business days prior to  
20 any production of documents, material or information in response  
21 thereto; and

22 (ii) at or before the time of production the subpoenaed party  
23 proceed in good faith to seek to obtain confidential treatment of such  
24 “Confidential” subpoenaed documents, material or information from the  
25 relevant governmental law enforcement agency or body to the fullest  
26 extent available under law; and

27 (j) Any other person that the Parties agree to in writing; provided,  
28 however, that prior to the disclosure of documents, material or information



1 designated as “Confidential” to any such person, counsel for the party making  
2 the disclosure shall deliver a copy of this Protective Order to such person, shall  
3 explain its terms to such person, and shall secure the signature of such person  
4 on a statement in the form attached hereto as Exhibit A.

5 7. For documents, material, or information designated as “Highly  
6 Confidential” (and any information derived therefrom), the following procedures shall  
7 apply:

8 (a) The designation “Highly Confidential” shall be used with respect  
9 to such documents, material or information in lieu of “Confidential.”

10 (b) Documents, material or information designated “Highly  
11 Confidential” shall receive all the same protections and treatment provided  
12 under this Protective Order as if they had been designated “Confidential,”  
13 except that disclosure thereof under paragraph 6(b) of this Protective Order  
14 shall not extend to in-house counsel of the receiving party and there shall be no  
15 disclosure thereof under paragraph 6(c) of this Protective Order.

16 (c) The provisions of paragraphs 5, 11 and 12 of this Protective Order  
17 as to the handling of disputes concerning the propriety of any designation of  
18 documents, material or information as “Confidential,” and as to the availability  
19 of applications to the Court in relation thereto, shall apply equally to any  
20 disputes concerning the propriety of any designation of documents, material or  
21 information as “Highly Confidential.”

22 8. Documents, material or information designated as “Confidential” or  
23 “Highly Confidential” shall be used by the persons receiving them only for the  
24 purposes of preparing for, conducting, participating in the conduct of, and/or  
25 prosecuting and/or defending the Action, and not for any business or other purpose  
26 whatsoever.

27 9. Nothing herein shall impose any restrictions on the use or disclosure by  
28 any party or witness of documents, material or information known or obtained by

1 such party or witness, by legitimate means, independently of the discovery obtained  
2 in the Action, whether or not such documents, material or information may  
3 additionally have been obtained through discovery in the Action.

4 10. If documents, material or information designated as “Confidential” or  
5 “Highly Confidential” are to be included in any papers to be filed with any court or  
6 are to be otherwise used before any court, such papers shall, *in accordance with*  
7 *Local Rule 79-5*, be accompanied by an application to file the papers, or the  
8 confidential portion thereof, under seal. The application shall be directed to the judge  
9 to whom the papers are directed. Pending the ruling on the application, the papers or  
10 portions thereof subject to the sealing application shall be lodged under seal.

11 11. Any party to the Action (or other person subject to the terms of this  
12 Protective Order) may ask the Court, after appropriate notice to the other parties to  
13 the Action, to modify or grant relief from any provision of this Protective Order,  
14 using the procedure set forth in Local Rule 37.

15 12. Entering into, agreeing to, and/or complying with the terms of this  
16 Protective Order shall not:

17 (a) operate as an admission by any person that any particular  
18 documents, material or information contain or reflect trade secrets, proprietary,  
19 confidential or competitively sensitive business, commercial, financial or  
20 personal information; or

21 (b) prejudice in any way the right of any party (or any other person  
22 subject to the terms of this Protective Order) at any time:

23 (i) to seek a determination by the Court of whether any  
24 particular document, material or information should be subject to  
25 protection as “Confidential” or “Highly Confidential” under the terms of  
26 this Protective Order; or

27 (ii) to seek relief from the Court on appropriate notice to all  
28 other parties to the Action from any provision(s) of this Protective Order,

1           either generally or as to any particular document, material or  
2           information, using the procedure set forth in Local Rule 37.

3           13.    Upon the termination of the Action (including all appeals), the Parties  
4           either (a) shall promptly return to counsel for each designating party all documents,  
5           material or information designated by that party as “Confidential” or “Highly  
6           Confidential” and all copies thereof (except that counsel for each party may maintain  
7           in its files one copy of each pleading filed with any court and one copy of each  
8           deposition together with the exhibits marked at the deposition), or (b) may agree with  
9           counsel for the designating party upon appropriate methods and certification of  
10          destruction of such documents, material or information. Also at such time, counsel  
11          for the designating party shall be given copies of each statement in the form attached  
12          hereto as Exhibit A that was signed pursuant to ¶ 6 of this Protective Order.

13          14.    This Protective Order shall survive the termination of this action, to the  
14          extent that the information contained in “Confidential” or “Highly Confidential”  
15          documents, material or information is not or does not become known to the public,  
16          and the Court shall retain jurisdiction over this Protective Order for the purpose of  
17          enforcing it.

18          15.    Any party to the Action who has not subscribed to this Protective Order  
19          as of the time it is presented to the Court for signature may thereafter become a party  
20          to this Protective Order by its counsel’s signing and dating a copy thereof and filing  
21          the same with the Court, and serving copies of such signed and dated copy upon the  
22          other parties to this Protective Order.

23          16.    Any documents, material or information that may be produced by a non-  
24          party witness in discovery in the Action pursuant to subpoena or otherwise may be  
25          designated by such non-party as “Confidential” or “Highly Confidential” under the  
26          terms of this Protective Order, and any such designation by a non-party shall have the  
27          same force and effect, and create the same duties and obligations, as if made by one  
28          of the Parties hereto. Any such designation shall also function as a consent by such

1 producing party to the authority of the Court in the Action to resolve and conclusively  
2 determine any motion or other application made by any person or party with respect  
3 to such designation, or any other matter otherwise arising under this Protective Order.  
4

5  
6 Dated: February 1, 2010

*Margaret A. Nagle*

\_\_\_\_\_  
The Honorable Margaret A. Nagle  
United States Magistrate Judge

**EXHIBIT "A"****ACKNOWLEDGMENT FORM - PROTECTIVE ORDER**

I, \_\_\_\_\_, hereby acknowledge that: (i) I have read the Protective Order entered in the action presently pending in the United States District Court, Central District of California, entitled Tokyo Broadcasting System v. American Broadcasting Companies, Inc., et al., USDC Lead Case No. CV 08-06550-MAN (Consolidated with Case No. CV 08-06622-MAN) (the "Action"); (ii) I understand the terms of the Protective Order; and (iii) I agree to be bound by its terms.

I will not divulge to persons other than those specifically authorized by this Protective Order, and I will not copy or use, except solely for the purposes of this Action, any documents or information obtained pursuant to this Protective Order, except as provided therein or otherwise ordered by the Court.

I further understand that I am to retain all copies of all documents or any information designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" provided to me in this Action in a secure manner, and that all copies of such documents are to remain in my personal custody until termination of my participation in this Action, whereupon the copies of such documents will be returned to counsel who provided me with such material.

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1 I consent to the jurisdiction of the United States District Court of the Central  
2 District of California for the purpose of enforcing said Protective Order, enjoining  
3 any anticipated violation of the Order or seeking damages for the breach of said  
4 Order.

5 I declare under penalty of perjury, under the laws of the United States of  
6 America, that the foregoing is true and correct. Executed this \_\_\_\_\_ day of \_\_\_\_\_,  
7 2009, at \_\_\_\_\_, California.

8 Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip